

AMERICAN INDIAN LAW SECTION OF THE STATE BAR OF MICHIGAN
STATE BAR OF MICHIGAN STANDING COMMITTEE ON AMERICAN INDIAN LAW
State Bar of Michigan ❖ 303 Townsend Street ❖ Lansing, MI 48933

September 12, 2012

Mr. Timothy Raubinger
Assistant Secretary
Michigan State Board of Law Examiners
925 West Ottawa Street
Lansing, MI 48915

Dear Mr. Raubinger,

The American Indian Law Section of the State Bar of Michigan and the State Bar of Michigan Standing Committee on American Indian Law request that the Michigan State Board of Law Examiners recommend to the Supreme Court of Michigan that Rule 3(A)(2) of the Rules for the Board of Law Examiners be amended to include American Indian law as one of the topics on the essay portion of the Michigan State Bar Exam. We advocate for this change in the Michigan State Bar Exam because it will recognize the interrelationships among and interdependence of American Indian Nations and the State of Michigan.

Tribal governments are a vital part of the legal framework and economic structure in Michigan. As governments and businesses, American Indian Nations generate significant amounts of legal work. Michigan is home to twelve federally recognized American Indian Nations and the twelve tribal court systems hear thousands of cases each year.¹ American Indian Nations are a substantial and growing part of the Michigan economy. Millions of patrons visit tribal resorts and casinos each year “with Indian gaming in Michigan recording a minimum net win of \$1.4 million” in 2011.² American Indian Nations also run energy businesses, restaurants, gas stations, casinos, resort destinations, golf courses, credit unions, construction businesses, health clinics, pharmacies and other businesses that contribute to the Michigan economy. These significant business operations provide valuable employment opportunities for American Indians and non-Indians in Michigan. For example, the Saginaw Chippewa Tribe is the largest employer

¹ Indian Tribal Courts Located in Michigan, Administration of Courts – State Court Administrative Office, <http://courts.michigan.gov/scao/services/tribalcourts/tribal.htm>.

² Michigan Gaming Control Board, Indian Gaming Section Annual Report to the Executive Director 2 (2011), at http://www.michigan.gov/documents/mgcb/Annual_Report_-_Indian_Gaming_2011_Final_proprietary_remove_386553_7.pdf.

in mid-Michigan³ and the Athens-based Nottawaseppi Huron Band of the Potawatomi plans to expand its workforce as it opens an eight-story hotel and develops its solar energy business this fall.⁴

American Indian law is relevant throughout the state. American Indian Nations are located across the state with three Potawatomi Nations in the south, and Odawa, Ojibwe, and Potawatomi Nations throughout central and northern Michigan (including the Upper Peninsula) (see enclosed Map of Federally Recognized Tribes in Michigan). Detroit and Grand Rapids also have significant urban American Indian populations. In fact, the State of Michigan has one of the highest American Indian populations east of the Mississippi River. The 2010 Census listed Michigan as one of the ten states with the largest American Indian and Alaska Native populations with almost 150,000 individual residents of the State of Michigan identified as American Indian or Alaska Native.⁵

The inclusion of Indian law on the bar exam has an impact that goes far beyond the obvious practical implications for all Michiganders and speaks to the role that tribal courts and governments play in the family of judicial systems and governments in our state and in the Nation.

Proposed Amendment to Rule 3 Examination Subjects and Grading

(A) The examination consists of two sections:

- (1) [Unchanged.]
- (2) An essay examination prepared by or under the supervision of the Board or by law professors selected by the Board, on these subjects:
 - (a)-(p) [Unchanged.]
 - (q) American Indian law

(B) [Unchanged.]

For purposes of the Michigan State Bar Examination (MSBE), American Indian law will be defined as: criminal and civil jurisdiction in Indian Country, the federal Indian Child Welfare Act (ICWA), the federal Indian Civil Rights Act, and tribal sovereign immunity. This limited definition specifies the knowledge that every newly admitted attorney needs to know to practice competently in the State of Michigan, yet will not require MSBE takers to know the detailed history or complicated nuances of American Indian law or the laws of individual American Indian Nations.

³ Mark Ranzenberger, Tribe is Major Employer; More than 3000 Workers are Employed by Tribe in Isabella County, The Morning Sun, March 9, 2011, at <http://www.themorningsun.com/articles/2011/03/09/business/srv0000010946238.txt?viewmode=fullstory>.

⁴ John C. Sherwood, Tribal Company Draws on the Sun to Generate Power – and Jobs, The Battle Creek Enquirer, April 20, 2012, <http://www.battlecreekenquirer.com/article/20120422/NEWS01/304230001>, (noting that the Nottawaseppi Band does not have enough tribal members to fill jobs and will be employing more people in Michigan).

⁵ U. S. Census Bureau, The American Indian and Alaska Native Population: 2010 (January 2012).

The addition of American Indian law to the essay portion of the Michigan State Bar Examination would not substantially alter the current MSBE. Like other essay subjects, American Indian law would not have to be tested on an annual basis. It could easily be incorporated into many of the subjects already tested on the MSBE, including but not limited to family law, domestic relations, torts, contracts, conflicts of law, constitutional law, and criminal law and procedure. A family law question could incorporate the Indian Child Welfare Act or a torts question could involve civil jurisdiction by having the tort occur at a tribally owned business. For more specific examples of how American Indian law could be incorporated into recent MBSE questions, please see enclosed Sample American Indian Law Questions.

Finally, we propose that the implementation of this change to Rule 3 be implemented three years after its adoption. This will give future bar exam takers time to properly prepare for the change in the MSBE by taking an American Indian law course in law school (each of the law schools in Michigan regularly teaches such a course) or a bar preparation course.

Rationale

I. Michigan State Courts Recognize the Importance of American Indian Law

Even if a Michigan lawyer never practices in tribal court or represents an American Indian client, the significant overlap between state and tribal court jurisdiction indicates the need for all lawyers licensed in the State of Michigan to have a basic understanding of the interrelationships among and boundaries of these court systems.⁶ The Michigan Supreme Court recognized this need when it adopted Michigan Court Rule 2.615 in May 1996.⁷ MCR 2.615 provides for the enforcement of tribal court judgments in Michigan State Courts and encourages reciprocity between tribal and state courts when it comes to the enforcement of judgments. It fosters the administration of justice in Michigan by ensuring that the two court systems respect one another's judgments.⁸ Knowledge of MCR 2.615 is essential for newly admitted practitioners, who may regularly be asked by clients to enforce state court judgments in tribal courts or find that they cannot enforce a state court judgment for a client without going to tribal court. Such actions are common

⁶ For more information on the relationships and agreements between tribal and state judicial systems in Michigan, see Kathryn Fort, *Waves of Education: Tribal-State Court Cooperation and the Indian Child Welfare Act* (forthcoming Tulsa L. Rev.), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2035451.

⁷ *Id.*

⁸ MCR 2.615 Enforcement of Tribal Judgments, available at <http://courts.michigan.gov/scao/services/tribalcourts/tribal.htm>. Further evidence of the State's recognition of and respect for tribal courts exists in the bench book on ICWA recently published by the State Court Administrators Office, which includes court rules recently amended to better comply with ICWA. Further evidence of the State's recognition of and respect for tribal courts exists in the bench book on ICWA recently published by the State Court Administrators Office, which includes court rules recently amended to better comply with ICWA.

in run of the mill landlord-tenant disputes, defaults on loans and credit cards, mortgage foreclosures, and other issues involving American Indians and Indian lands.⁹

Several cases recently decided by State of Michigan courts emphasize the importance of American Indian law and the need for practitioners in the state to have a basic understanding of this growing area of law. In the past three years, the Supreme Court of Michigan has heard three cases under the Indian Child Welfare Act.¹⁰ These Supreme Court cases reflect an increasing number of lower court cases involving American Indians, and especially child welfare issues. In the past twenty five years, appellate courts in Michigan have heard and decided 77 cases involving the Indian Child Welfare Act.¹¹ While it is difficult to determine the exact number of trial court cases, on average, the Michigan Department of Human Services oversees 300 American Indian Foster Care Cases each year.¹² According to the Michigan Department of Human Services, American Indian Foster Care Cases arise in counties throughout the state.¹³ Michigan state courts have also heard an increasing number of other issues related to American Indian law in recent years. These cases have involved tribal sovereignty immunity,¹⁴ employment at American Indian Nations' governments and businesses,¹⁵ treaty fishing rights, criminal jurisdiction in Indian country,¹⁶ and other issues.

II. Newly Admitted Practitioners Will Face American Indian Law Issues in Practice

As a result of the substantial presence of American Indian Nations and American Indian individuals in the state, most newly admitted practitioners in Michigan will encounter American Indian law issues. The following examples are issues relating to American Indian Nations and their citizens that may arise for a general practitioner in Michigan:

⁹ See, e.g., *Broad v. Plagens*, 8 Am. Tribal Law 191 (Grand Traverse Band Tribal Ct 2009) (seeking enforcement of debt collection judgment based on underlying landlord-tenant dispute from state court of Michigan); *Members Credit Union v. Alhameed*, 8 Am. Tribal Law 183 (Grand Traverse Band Tribal Ct 2009) (seeking enforcement of debt collection judgment of state court of Michigan through withholding from per capita payment).

¹⁰ *In re J.L.*, 483 Mich. 300 (Mich. 2009); *In re C.I. Morris*, No. 142759 (Mich. S. Ct. 2012); *In re J.L. Gordon*, No. 143673 (Mich. S. Ct. 2012).

¹¹ Native American Rights Fund, ICWA Guide Online, Index of Michigan Cases, at <http://narf.org/icwa/state/michigan/case.htm>.

¹² See, e.g., State of Michigan Department of Human Services, American Indian Foster Care Cases Summary 01/01/2012 – 03/31/2012; Michigan Department of Human Services Office of Native American Affairs, https://www.michigan.gov/documents/dhs/DHS-Pub-0184_361034_7.pdf.

¹³ *Id.*

¹⁴ See, e.g., *Swikoski v. Citizens Ins. Co.*, 2000 Mich. App. LEXIS 2333 (Mich. Ct. App. 2000); *Sault Ste. Marie Tribe of Chippewa Indians v. Bouschor*, 2008 Mich. App. LEXIS 2266 (Mich. Ct. App. Nov. 18, 2008).

¹⁵ See, e.g., *Kandra K. Robbins v. Sault Ste. Marie Tribe of Chippewa Indians*, No. 290321 (Mich. Ct. App. May 20, 2010) (resignation and severance pay); *Sault Ste. Marie Tribe of Chippewa Indians v. Bouschor*, 2008 Mich. App. LEXIS 2266 (Mich. Ct. App. Nov. 18, 2008).

¹⁶ See, e.g., *Moses v. Dept. of Corrections*, 274 Mich. App. (Mich. Ct. App. 2007) (deciding whether crime was committed in Indian country and outside state jurisdiction); *People v. Bennett*, 491 N.W. 2d 866 (Mich. Ct. App. 1992) (interpreting impact of Treaty of October 18, 1864).

- garnishment and attachment of wages earned from employment of tribal businesses or governments for child support or any other judgment;¹⁷
- garnishment and attachment of per capita payments to tribal citizens for child support or any other civil or criminal judgment (e.g., back rent, defaults on loans or credit cards);¹⁸
- various torts and other civil actions arising at tribal businesses and on tribal properties (from parking tickets and routine slip and fall cases to ADA claims);
- federal, state and tribal criminal cases;¹⁹
- employment law issues, including but not limited to unemployment issues, wrongful termination, and workers compensation;²⁰
- repossession of property on the reservation (e.g., vehicles, mobile homes, etc.);²¹
- administration of public benefits, including Medicare, Medicaid, social security, and food stamps, to American Indian individuals under the Jay Treaty;²²
- intersection of administration of public benefits with per capita payments to individual American Indians;
- questions about ancestry and tribal enrollment;
- child welfare issues, including guardianships, adoption, and juvenile delinquency;²³
- family law matters, including divorces involving a tribal member married to a non-tribal member, child custody, parenting time, and child support;
- estate planning involving American Indians or American Indian lands;²⁴

¹⁷ *Enforcing State Child-Support Orders in Tribal Courts*, 25 The Pundit: The Source for Michigan Child-Support Information 3 (February 2012)

<<http://courts.michigan.gov/scao/resources/publications/focbnewsletters/January2012pundit.pdf>>.

¹⁸ *Id.* See, e.g., *Broad v. Plagens*, 8 Am. Tribal Law 191 (Grand Traverse Band Tribal Ct 2009) (seeking enforcement of debt collection judgment based on underlying landlord-tenant dispute from state court of Michigan); *Members Credit Union v. Alhameed*, 8 Am. Tribal Law 183 (Grand Traverse Band Tribal Ct 2009) (seeking enforcement of debt collection judgment of state court of Michigan through withholding from per capita payment).

¹⁹ See, e.g., *People of MI v. Collins and Mason*, COA Nos. 300644 and 300645 (the question of whether the State of Michigan has criminal jurisdiction over non-Indians on reservation when “victimless” crimes are committed is currently before the Michigan Court of Appeals); *Moses v. Dept. of Corrections*, 274 Mich. App. 481 (Mich. Ct. App. 2007) (deciding whether crime was committed in Indian country and outside state jurisdiction); *People v. Bennett*, 491 N.W. 2d 866 (Mich. Ct. App. 1992) (interpreting impact of Treaty of October 18, 1864).

²⁰ See, e.g., *Kandra K. Robbins v. Sault Ste. Marie Tribe of Chippewa Indians*, No. 290321 (Mich. Ct. App. May 20, 2010) (resignation and severance pay); *Sault Ste. Marie Tribe of Chippewa Indians v. Bouschor*, 2008 Mich. App. LEXIS 2266 (Mich. Ct. App. Nov. 18, 2008).

²¹ See generally *Fronteras*, at <http://www.fronteradesk.org/news/2012/mar/01/automatic-vehicle-repo-devices-illegal-navajo-nati/#.T8Z6AcUecXQ>.

²² See generally *Wabanaki Legal News*, at <http://www.ptla.org/wabanaki/border-crossing-rights-between-united-states-and-canada-aboriginal-people>.

²³ Cami Fraser, *Should this ICWA Case Be Transferred to Tribal Court? Issues for Parents’ Attorneys to Consider and Discuss with their Client*, 13 Mich. Child Welfare Law Journal 2 (Spring 2011); Cami Fraser, Tom Myers, & Aaron Allen, *Michigan Juvenile Delinquency Cases and the Indian Child Welfare Act*, 12 Michigan Child Welfare Law Journal 11 (Winter 2009).

- personal protection orders involving both American Indians and non-Indians employed by a tribally-owned business or residing on the reservation;²⁵
- civil infractions committed by non-Indians on Indian lands, including at gaming enterprises; and
- contracting, corporate governance, real estate development, banking and financial services and other transactional issues when a tribally-owned or tribally-incorporated business is involved.²⁶

As this list shows, there are multiple occasions where a newly admitted practitioner in Michigan will encounter American Indian law in his or her daily practice.

New practitioners need to be aware of the interrelationships between Michigan state law and legal issues related to American Indians and their lands. Multiple accords, compacts, and intergovernmental agreements entered into between the State of Michigan and American Indian Nations govern these relationships. These agreements cover gaming,²⁷ tribal business development, natural resource management, regulation of the Great Lakes fishery, cross-deputization and law enforcement,²⁸ taxation,²⁹ American Indian child welfare,³⁰ zoning, land use, Title IV-E and other issues. Under the gaming compacts between the State and the gaming tribes, tribes are required to follow state dram shop, drinking age, workers compensation, and unemployment laws.³¹ Without basic knowledge of American Indian law and tribal sovereignty, newly admitted lawyers will not know to consider these types of agreements and, accordingly, what law applies to an otherwise seemingly routine workers compensation or employment law issue and will disserve their clients.

In addition to American Indian issues intertwined with Michigan state law, newly admitted practitioners will face legal issues that involve tribal court systems. Twelve tribal courts currently operate within the State of Michigan³² and, as discussed above, the State of Michigan has consistently recognized the importance of American Indian Nations as separate legal systems. At a bare minimum, applicants to the State Bar of

²⁴ Indian Land Tenure Foundation, Importance of Estate Planning, The Message Runner, Vol. 2 (No date), at <http://www.iltf.org/sites/default/files/Message%20Runner%202%20-%20lowres.pdf> (discussing the need for estate planning among American Indian individuals to prevent problems of fractionalization).

²⁵ Office on Violence Against Native Women and the National Center on Full Faith and Credit, Violence Against Native Women: A Guide for Practitioner Action (2006) (explaining that tribal protection orders are often the only recourse Indian women have against non-Indian abusers).

²⁶ R. Lance Boldrey & Jason Hanselman, *Proceed with Prudence: Advising Clients Doing Business in Indian Country*, 89 Mich. Bar Journal 34 (Feb 2010).

²⁷ The Tribal-State Gaming Compacts in Michigan can be found at http://www.michigan.gov/mgcb/0,1607,7-120-1380_1414_2182---,00.html.

²⁸ Matthew L. M. Fletcher, Kathryn E. Fort, and Wenona T. Singel, *Indian Country Law Enforcement and Cooperative Public Safety Agreements*, 89 Mich. Bar Journal 42 (Feb 2010).

²⁹ The Tribal-State Tax Agreements can be found at http://www.michigan.gov/taxes/0,1607,7-238-43513_43517---,00.html

³⁰ The Tribal-State ICWA agreements can be found at <http://www.mfia.state.mi.us/olmweb/ex/tam/tam.pdf>.

³¹ See, e.g., Tribal-State Compacts in Michigan, Michigan Gaming Control Board, http://www.michigan.gov/mgcb/0,1607,7-120-1380_1414_2182---,00.html.

³² Indian Tribal Courts Located in Michigan, Administration of Courts – State Court Administrative Office, <http://courts.michigan.gov/scao/services/tribalcourts/tribal.htm>.

Michigan need to be familiar with the existence of the separate legal systems of American Indian Nations.

By adding American Indian law as a subject to the MBSE, the State of Michigan will ensure that all newly admitted attorneys in Michigan have a basic understanding of American Indian law and are competent to represent their American Indian and non-Indian clients. It is important for newly admitted practitioners to be exposed to American Indian law issues prior to their admittance to the State Bar of Michigan to ensure that they are able to identify and handle such routine issues and, thus, effectively represent their American Indian and non-Indian clients. As American Indian Nations employ a greater percentage of the Michigan population, more and more newly admitted practitioners will face questions about employment-related issues at tribal businesses. Without a basic understanding of American Indian law, the newly admitted practitioner is unlikely to know which court has jurisdiction over a routine slip and fall case arising on tribal lands, how to garnish wages earned from employment at a tribal business, or how to seek enforcement of a child support order through a tribal court. This lack of knowledge threatens the competence of lawyers newly licensed by the State of Michigan because it greatly increases the chances that they will accidentally overlook an American Indian law related issue, such as the American Indian status of a child in a custody proceeding or an issue of tribal sovereign immunity in a standard slip and fall case occurring at a tribal business.³³

III. Michigan Law Schools Recognize the Importance of American Indian Law

Law schools within the State of Michigan already recognize the importance of educating future legal professionals in American Indian law. All five law schools in the State of Michigan train students in American Indian law by offering courses in the subject. The majority have tenured or tenure-track professors teaching these courses. Michigan State University College of Law houses the Indigenous Law and Policy Center.³⁴ Professor Matthew Fletcher is one of the most well-respected American Indian law professors in the United States, and the program offers a certificate in Indigenous Law.³⁵ In addition to regularly offering an American Indian Law class, the University of Michigan's Child Advocacy Law Clinic also specializes in issues relating to the Indian Child Welfare Act.

Even if a student does not take an American Indian law course during law school, Michigan Bar applicants will have the opportunity to take bar preparation courses that cover American Indian law. Bar preparation programs, such as Barbri, already provide coverage of American Indian law in other state bar courses, including New Mexico and

³³ For an example of a malpractice suit related to American Indian law, see *Sault Ste. Marie Tribe of Chippewa Indians v. Bouschor*, 777 N.W.2d 143 (Mich. 2010). The suit eventually settled with the law firm paying the Tribe \$1 million. *Sault Tribe Settles with Miller Canfield in Bouschor Case*, at <http://turtletalk.wordpress.com/2010/05/21/sault-tribe-settles-with-miller-canfield-in-bouschor-case/>.

³⁴ Michigan State University College of Law Indigenous Law & Policy Center, at <http://www.law.msu.edu/indigenous/center-clinic.html>.

³⁵ Indigenous Law Certificate Program, at http://www.law.msu.edu/indigenous/cert_prog.html.

Washington, and thus will be able to easily include such materials in the Michigan course.

IV. The Importance of American Indian Law is Gaining Recognition Nationally

By adding American Indian law to the MSBE, Michigan would be the first Great Lakes state to join a nationwide trend towards including Indian law on state bar exams. In recent years, the States of New Mexico, Washington, and South Dakota have all added American Indian law as a subject tested on the essay portion of their bar examinations. The National Congress of American Indians, the largest and oldest national organization of American Indian and Alaska Native tribal governments, the National Native American Bar Association, and regional tribal organizations have also called for the inclusion of American Indian law on state bar exams, including the MSBE (see enclosed resolutions).

Conclusion

Due to the significant economic and geographic presence of American Indian Nations and individuals in the State of Michigan, the citizens of Michigan and their attorneys need to understand how tribal self-governance and laws intersect with and affect the practice of law in the State of Michigan. The inclusion of American Indian law on the MBSE will provide attorneys in Michigan with the basic knowledge required to competently represent their clients and it will reinforce the strong relationships already developed by the State of Michigan with American Indian nations. For the foregoing reasons, we request that the Michigan State Board of Law Examiners recommend that the Supreme Court of Michigan consider amending Rule 3(A)(2) of the Rules for the Board of Law Examiners to include American Indian law as one of the topics on the Michigan State Bar Exam.

Thank you for your consideration of this proposal.

Sincerely,

American Indian Law Section of the State Bar of Michigan
State Bar of Michigan Standing Committee on American Indian Law Committee

encl: Sample American Indian Law Questions
Map of Federally Recognized Tribes in Michigan
NCAI Resolution
NNABA Resolution
ATNI Resolution

cc: Justice Michael Cavanaugh
Anne Boomer

SAMPLE AMERICAN INDIAN LAW QUESTIONS FOR THE MICHIGAN STATE BAR
EXAMINATION

SAMPLE QUESTION 1

THIS QUESTION IS BASED ON QUESTION 8 OF THE FEBRUARY 2012 MICHIGAN STATE BAR EXAM. IT TESTS TORTS, TRIBAL SOVEREIGN IMMUNITY, AND CIVIL COURT JURISDICTION.

John Smith and Peter Ryan were next-door neighbors on tribal trust property within the exterior boundaries of the Grand Traverse Band of Ottawa and Chippewa Indians reservation. Smith was also Tribal Chairman, and the tribe was known for well-manicured lawns and well-kept homes. Across the street from Chairman Smith and Ryan lived John Johnson, with whom Smith and Ryan had a longstanding dispute over Johnson's failure to maintain the standards of the reservation. In fact, Johnson's house was in poor condition--his lawn was always long, his bushes were rarely trimmed, paint was chipping off his house, and vines were growing over some of his windows. As a result, Smith and Ryan wanted Johnson out of the neighborhood, but Johnson refused to move--or to fix up his property.

Mayor Smith contacted the inspector, who viewed Johnson's property with the Chairman and Ryan and informed them that he found no violation of any tribal ordinance. Chairman Smith and Ryan disagreed with the inspector's assessment. At the tribal council meeting, after regular business concluded, Chairman Smith (who, as Chairman, presides over each council meeting) said that Johnson "could not take proper care of a doll house--his property is a nuisance, an embarrassment to the entire neighborhood, and is in violation of our ordinances." Johnson, also in attendance, objected and said that his house had passed an inspection. In response to inquiries from council members, the inspector testified to council that there were no violations, and Tribal council took no action against Johnson.

After the meeting ended and the council left, Ryan complained to any citizen who would listen that Johnson had caused his house to be "in violation of several ordinances and his house should be condemned," or minimally, he should be jailed (the ordinances are criminal in nature).

Johnson sued both Chairman Smith and Ryan for

slander in a Michigan State Court. After admitting that they made the respective statements, Smith and Ryan separately moved for dismissal. Both sought dismissal for lack of jurisdiction, Smith sought dismissal on sovereign immunity grounds, while Ryan argued that no genuine issue of material fact existed because Johnson could not establish a prima facie case of slander.

Should the motions be granted? Explain your answers.

SAMPLE QUESTION 2

THIS QUESTION IS BASED ON QUESTION 15 OF THE FEBRUARY 2012 MICHIGAN STATE BAR EXAM. IT TESTS CRIMINAL PROCEDURE AND CRIMINAL COURT JURISDICTION.

After an emergency 911 call was received regarding an unconscious non-Native American female found on trust property within the exterior boundaries of the Saginaw Chippewa Indian Tribe, the first to arrive at the residence was a private ambulance company. The driver hurried into the home to find the female laying motionless. The ambulance driver found no signs of life. Turning to the Native American homeowner, the driver asked who the person was and what had happened. The homeowner said, "She's someone I met last night. She stayed over. I gave her some morphine to get high. She overdosed." The ambulance driver also asked if the morphine was the homeowner's. He said, "Yes, it was."

A tribal police officer then arrived on the scene and took over questioning the homeowner. When he again told the same story, the officer place him in the officer's squad car. The officer handcuffed the homeowner, placed him in the back seat of his squad car, and locked him in there to return to the house.

Moments later, the tribal police officer came to the squad car, told the homeowner that the girl was dead and asked about the morphine. At this point, the homeowner said, "Well I shouldn't have shot her up with so much morphine. I just wanted her to enjoy her high. I did the wrong thing."

The homeowner was then transported to the tribal police station where two FBI agents interrogated him after advising him of his Miranda rights. At the conclusion of the advice of rights, the homeowner said, "Well, is this when I'm supposed to ask for a lawyer?" In response to the question, one of the detectives asked, "Well, do you want a lawyer?" The homeowner responded, "Well isn't it always best to have a lawyer?" He then said, "Oh well, I'll talk to you." A full confession followed.

The homeowner was charged in Federal Court with manslaughter. Prior to trial, defense counsel filed a

motion to dismiss for lack of jurisdiction. The defense counsel also moved to suppress the defendant's statements that were made to the ambulance driver, and the tribal police officer, because of a lack of Miranda warnings. Counsel also sought suppression of the confession to the FBI agents because, although Miranda warnings were given, the agents ignored the defendant's request for counsel by continuing to question him.

What should the Federal court rule on the defendants' requests? Explain your answer.

SAMPLE QUESTION 3

THIS QUESTION TESTS FAMILY LAW, TRIBAL COURT JURISDICTION, AND THE INDIAN CHILD WELFARE ACT.

Mary Fountain, a member of the Grand Traverse Band of Ottawa and Chippewa of Indians (GTB), was a 20-year-old college student who resided on the tribe's reservation in northern Michigan when she met Charles "Charlie" Content. Mary had been a life-long resident of the reservation. At the time she met Charlie, she was just finishing her second year of college at the tribe's community college. She had decided that she would continue her education at Western Michigan University and was enrolled there for the fall semester. Her goal was to finish her bachelor's degree in elementary education then to return to the reservation and teach at the tribal elementary school.

Charlie was also a member of the GTB. Charlie, who like Mary was 20 when they met, was taking classes in auto mechanics at the tribal community college and working part-time at a gas station/garage in the evenings and on weekends. Charlie's father had been a career member of the military, so Charlie had moved around the country a fair amount and, as a result, had never lived for an extended period of time on the reservation. After completing high school, he returned to his family's ancestral home in northern Michigan, where he planned on residing in order to be near his extended family and because he was an avid outdoorsman and could pursue his interests there.

Charlie and Mary met in the cafeteria at the college, soon began dating, and entered into a sexual relationship. Eventually Mary became pregnant. She and Charlie talked about the situation a good deal over the next few weeks and they decided that neither of them was in a position to raise the baby, so they decided to place the baby for adoption.

As summer drew to a close, as was her plan, Mary left the reservation to attend school in Kalamazoo. She and Charlie spoke regularly about what to do about the baby. Charlie had some friends, Michael and Heather Champney, a couple in their early 30s, that lived in Grand Rapids whom he suggested might adopt the baby. Mary met the couple on several occasions and,

although she initially had some reservations because the couple was not American Indian, decided that she liked them a great deal and thought they would be excellent parents. It was agreed that Michael and Heather would adopt the baby and they obtained the necessary home studies.

When the time came that fall for Mary to have the baby, she approached the court to obtain a direct placement adoption of the baby with the Champneys. The court took the releases from each parent and, exercising its right to grant an immediate confirmation, quickly granted the Champneys' petition and entered a final order of adoption. Word of the adoption made its way back to members of the tribe's children's committee. Two months after the child's birth, the tribe's lawyers filed a motion to intervene in the case and vacate the adoption. The tribe argues that the adoption proceedings in state court violated the Indian Child Welfare Act.

The trial court granted the tribe's motion to intervene but denied the motion to vacate the final order of adoption. It did so for two reasons. First, the mother and father of the child had gone to considerable trouble to locate a couple to adopt their baby and, therefore, evidenced an intention that their tribe not be involved in the decision-making regarding the matter. Second, the court held that because the baby had never been on the reservation, she was not domiciled there, which gave the state court jurisdiction to hear the adoption matter.

Did the trial court properly handled the adoption and the tribe's motions? Explain your answer.

Michigan

Federally Recognized Tribes

Keweenaw Bay Chippewa Tribe

Bay Mills Chippewa
Indian Community

Sault Ste Marie Tribe
Chippewa Indians

Lac Vieux Desert
Chippewa Tribe

Hannahville
Potawatomi Tribe

Little Traverse Bay Bands
of Odawa Indians

Grand Traverse Band
Ottawa/Chippewa Indians

Little River Band
Ottawa Indians

Saginaw Chippewa Tribe

Gun Lake Potawatomi Tribe

Pokagon Band
Potawatomi Indians

Huron Band
Potawatomi Indians



0 50 100 Miles

This map is intended for general informational purposes only, and is subject to change. LTBB makes no warranties of any kind, including but not limited to data accuracy or project application. Data Sources - State of Michigan CGI, LTBB GIS Department, LTBB Education Department. July 10, 2007



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MOH-04-001

TITLE: The Examination of Indian Law on State Bar Examinations

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SOUTHEAST
Eddie Tullis
Poarch Band of Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band Potawatomi Nation

SOUTHWEST
John F. Gonzales
San Ildefonso Pueblo

WESTERN
Arlan Melendez
Reno-Sparks Indian Colony

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Tribal economic development and the resulting increase in interaction of Indian nations and people, with non-Indian entities and individuals both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between Tribal and non-tribal parties; and

WHEREAS, the American public and their attorneys do not generally understand the legal import of our Indian nations' inherent sovereign rights; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Indian nations, affect and intersect Anglo-American legal principles; and

WHEREAS, if attorneys for the American public, particularly federal, state and local government, better understood the legal concepts of Tribal self-governance and Tribal jurisdiction, there would be fewer disputes and government-to-government dialogue would be greatly enhanced; and

WHEREAS, in February 2002 the State of New Mexico became the first state to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel and, in turn, the American public about the legal rights of sovereign Indian nations; and

WHEREAS, the majority of American states, which host large populations of Indian people and/or a significant presence of Tribal lands, including Washington, Oregon, California, Idaho, Montana, Colorado, Arizona, New Mexico, Nevada, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Maine, Connecticut, Louisiana and Florida, should likewise include the topic of Indian law on their bar licensing examinations.

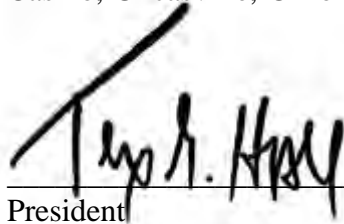
NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the Affiliated Tribes of Northwest Indians and the Association of Washington Tribes, and their friends and colleagues in the Northwest Indian Bar Association, the Washington State Bar Association Indian Law Section and Idaho State Bar Indian Law Section, and the National Native American Bar Association, in their endeavor to have the topic of Indian law tested by state bar associations, so the American public can better understand the inherent sovereign rights of our Indian nations.

BE IT FURTHER RESOLVED, that the NCAI does hereby seek the assistance and collaboration of the American Bar Association, and the bar associations, boards of bar examiners and Supreme Courts in states such as Washington, Oregon, California, Idaho, Montana, Colorado, Arizona, New Mexico, Nevada, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Connecticut, Maine, Louisiana and Florida, to carry out the provisions of this resolution.

BE IT FINALLY RESOLVED, that this resolution be immediately transmitted upon its effective date to the President and President-elect of the American Bar Association.

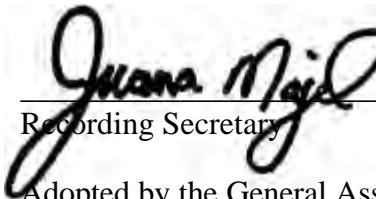
CERTIFICATION

The foregoing resolution was adopted at the 2004 Mid-Year Session of the National Congress of American Indians, held at the Mohegan Sun Hotel and Casino, Uncasville, CT on June 23, 2004 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2004 Mid-Year Session of the National Congress of American Indians, held at the Mohegan Sun Hotel and Casino, in Uncasville, CT on June 23, 2004.

National Native American Bar Association

Resolution No. 2004-2

WHEREAS, tribal economic development and the resulting increase in interaction of Indian nations and people with non-Indian entities and individuals both on and off of reservations has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties;

WHEREAS, the American public, including attorneys, generally lack understanding as to the legal importance of our Indian nations' inherent sovereign rights, how tribal self-governance and self-determination works, the laws and ways of Indian nations in general, and how federal Indian law affects and intersects with other non-Indian legal principles;

WHEREAS, the National Native American Bar Association believes that if attorneys licensed to practice in the United States, particularly those that work for federal, state and local governments, better understood the legal concepts of tribal sovereignty and tribal self-governance there would be fewer disputes and greater government-to-government dialogue between Indian tribes and federal, state, and local governments;

WHEREAS, in February 2002 the State of New Mexico became the first state in the union to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel and, in turn, the American public, about the legal rights of sovereign Indian nations;

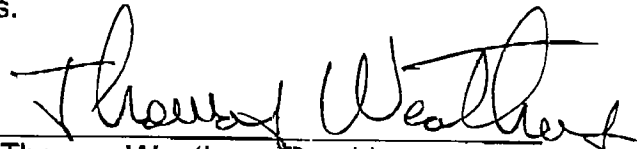
WHEREAS, the National Native American Bar Association believes that if states with a large Indian population tested Indian law on their bar licensing exams that would greatly improve knowledge and understanding about tribal sovereignty and tribal self-governance and lead to a decrease in disputes and litigation between Indian tribes and federal, state, and local governments;

NOW THEREFORE BE IT RESOLVED, that the National Native American Bar Association requests that Indian law be tested on bar licensing exams in states with large Indian populations and that the National Native American Bar Association will work with other bar associations, including the American Bar Association, to achieve this goal.

CERTIFICATION

I, Thomas Weathers, the duly-elected President of the National Native American Bar Association, hereby certify that the foregoing Resolution was enacted by a vote of 12 in favor, 0 against, and 0 abstaining, at a duly-noticed meeting of the Board of Directors.

Date: 5/4/04


Thomas Weathers, President



Affiliated Tribes of Northwest Indians

2004 Mid-Year Conference Lincoln City, Oregon

RESOLUTION #04 - 65

"THE EXAMINATION OF INDIAN LAW ON STATE BAR EXAMINATIONS"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

WHEREAS, Tribal economic development and the resulting increase in interaction of Indian nations and people, with non-Indian entities and individuals both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between Tribal and non-tribal parties; and

AFFILIATED TRIBES OF NORTHWEST INDIANS

RESOLUTION # 04 - 65

WHEREAS, the American public and their attorneys do not generally understand the legal import of our Indian nations' inherent sovereign rights; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Indian nations, affect and intersect Anglo-American legal principles; and

WHEREAS, if attorneys for the American public, particularly federal, state and local government, better understood the legal concepts of Tribal self-governance and Tribal jurisdiction, there would be fewer disputes and government-to-government dialogue would be greatly enhanced; and

WHEREAS, in February 2002 the State of New Mexico became the first state to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel and, in turn, the American public about the legal rights of sovereign Indian nations; and

WHEREAS, the majority of American states, which host large populations of Indian people and/or a significant presence of Tribal lands, including Washington, Oregon, California, Idaho, Montana, Nevada, Alaska, Colorado, Arizona, New Mexico, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Maine, Connecticut, Louisiana and Florida, should likewise include the topic of Indian law on their bar licensing examinations; now

THEREFORE BE IT RESOLVED, that ATNI does hereby support the Association of Washington Tribes, and the Association's friends and colleagues in the Northwest Indian Bar Association, the Washington State Bar Association Indian Law Section and Idaho State Bar Indian Law Section, and the National Native American Bar Association, in their endeavor to have the topic of Indian law tested by state bar associations, so the American public can better understand the inherent sovereign rights of our Indian nations; and

THEREFORE BE IT FURTHER RESOLVED, that ATNI does hereby seek the assistance and collaboration of the American Bar Association, and the bar associations, boards of bar examiners and Supreme Courts in states such as Washington, Oregon, California, Idaho, Montana, Nevada, Alaska, Colorado, Arizona, New Mexico, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Connecticut, Maine, Louisiana and Florida, to carry out the provisions of this Resolution; and

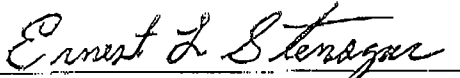
THEREFORE BE IT FINALLY RESOLVED, that this Resolution be immediately transmitted upon its effective date to the President and President-elect of the American Bar Association.


AFFILIATED TRIBES OF NORTHWEST INDIANS

RESOLUTION # 04 - 65

CERTIFICATION

The foregoing resolution was adopted at the 2004 Mid-Year Conference of the Affiliated Tribes of Northwest Indians, held at the Chinook Winds Casino and Convention Center in Lincoln City, Oregon on May 20, 2004 with a quorum present.


Ernest L. Stensgar, President


Norma Jean Loeie, Secretary